

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

FILED  
JAN 06 2012  
PATRICK E. DUFFY, CLERK  
By DEPUTY CLERK, MISSOULA

DUSTY W. BARGER, also known as Dusty W. Leetch, Petitioner, vs. MIKE MAHONEY; ATTORNEY GENERAL OF THE STATE OF MONTANA, Respondent.) Cause No. CV 10-53-H-DWM ORDER DISMISSING MOTION AND DENYING CERTIFICATE OF APPEALABILITY

This action for writ of habeas corpus under 28 U.S.C. § 2254 was closed on January 12, 2011. On January 3, 2012, Petitioner Barger filed a motion asking that he be fingerprinted. Barger is a state parolee proceeding pro se.

The only conceivable purpose of fingerprinting would be to prove that Petitioner Dusty Barger, a/k/a Dusty Leetch, is not the person who committed the crimes of which Petitioner Dusty Barger, a/k/a Dusty Leetch, was convicted. That means, in turn, that the motion for fingerprinting is not a garden-variety motion under Fed. R. Civ. P. 60(b) but, in substance, a second or successive habeas petition,

*Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005), and, consequently, this Court lacks jurisdiction even to consider it, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam); 28 U.S.C. § 2244(b)(3)(A). The Ninth Circuit Court of Appeals would have jurisdiction to consider an application for authorization to file a second petition in this Court, but transfer is not in the interests of justice, 28 U.S.C. § 1631. Barger's initial claims of "diplomatic immunity" and a purely fictitious "10 for 10 law," which appeared to be some kind of "law enforcement privilege" to commit crime, were frivolous, untimely nearly ten years, and unexhausted. In addition, Barger objected to the Magistrate Judge's Findings and Recommendation by suggesting that he be fingerprinted, his objection was overruled, and Barger did not appeal. *See Order* (doc. 5) at 2-3.

A certificate of appealability is not warranted because Barger has never made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED that Barger's motion (doc. 7) is DISMISSED for lack of jurisdiction and a certificate of appealability is DENIED.

DATED this 6 day of January 2012

Donald W. Molloy  
United States District Court